

Isagani Dela Peña, Jr.
Fed. Reg. No. 00944-093
P. O. Box 019001
Atwater, CA 95301-0910

FILED
DISTRICT COURT OF GUAM
MAR 23 2006
MARY L.M. MORAN
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

Isagani Dela Peña, Jr.,
Petitioner,
vs.
Unites States of America,
Respondent.

Criminal Case No. 00-00126
Civil Case No. 04-00004

MOTION FOR ACCELERATED ADJUDICATION
OF MOTION FOR CERTIFICATE OF APPEALABILITY

Comes now Isagani Dela Peña, petitioner pro se in the above-entitled action, and hereby moves this court to speedily issue its order regarding his Motion for Certificate of Appealability regarding this court's 7 July 2005 denial of his Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 USC §2255. In support of his motion, petitioner states the following:

1. Petitioner filed his initial motion pursuant to §2255 on 22 January 2004, some 26 months ago;

2. Petitioner received the court's 7 July 2005 order denying his above-referenced motion pursuant to §2255 on 19 July 2005, neither marked nor treated as legal mail;

3. Petitioner timely filed a Notice of Appeal, Motion for Certificate of Appealability, and Certificate of Service attesting to the required service of that notice and motion on opposing counsel (attached) regarding that order on 9 August 2005 by placing them in an envelope properly addressed to this court with first-class postage affixed, sealing the envelope, and depositing the envelope in the legal mail box at the U.S. Penitentiary at Atwater, CA;

4. Petitioner has not received the requested Certificate of Appealability (COA) or a statement from the court as to why a COA should not issue or any notice that any portion of the record has been forwarded to the court of appeals;

5. Over seven (7) months has elapsed since petitioner filed his Notice of Appeal and Motion for Certificate of Appealability;

6. 28 USC §2255, 28 USC §2253, FRAP Rule 22(b)(1), and Circuit Rule 22-1 entitle petitioner to appeal this court's 7 July 2005 denial of his 2255 motion if this court issues a COA or to a statement of the reasons why a COA should not issue and the opportunity to seek a COA from the court of appeals if it does not;

7. Circuit Rule 22-1 states: "The court of appeals will not act on a motion for a COA if the district court has not ruled first.";

8. Petitioner contends in his 2255 motion and motion for a COA that he is currently serving prison time he should not be serving as a result of the denial of constitutional rights;

9. Petitioner firmly believes he has made a substantial showing of the denial of constitutional rights in both his 2255 motion and his motion for a COA;

10. Though petitioner is not aware of any time limit by which a district court must rule on a motion for a COA, the language of §2255, including the one-year limit on filing under it, FRAP Rule 4's 60 day time limit on filing a notice of appeal, the time limits of 28 USC §2243 indicating an intent for habeas corpus to be a fast and speedy vehicle for determining the legality of detention, the general legislative intent that criminal convictions swiftly reach the limit of finality, and justice all suggest that 26 months is too long for petitioner's 2255 motion to transit the district court;

11. Petitioner contends that further delay in ruling on his motion for a COA would constitute a denial of due process in that it denies him the appeal of this court's 7 July 2005 order to which he is entitled and will require him to serve prison time he should not.

In light of the foregoing, petitioner requests that this court either issue him a COA so he may proceed with

his appeal or provide him a statement of the reasons why it will not issue a COA so he may request one of the court of appeals.

I, Isagani Dela Peña, certify under penalty of perjury pursuant to 28 USC §1746 that the foregoing is true and correct.

DATE: 14 March 2006

Respectfully submitted,

Isagani Dela Peña

Isagani Dela Peña, pro

se

Isagani Dela Peña, Jr.
Fed. Reg. No. 00944-093
P. O. Box 019001
Atwater, CA 95301-0910

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

Isagani Dela Peña, Jr.,
Petitioner,
vs.
Unites States of America,
Respondent.

Criminal Case No. 00-00126
Civil Case No. 04-00004

AFFIDAVIT OF ISAGANI DELA PEÑA

Comes now Isagani Dela Peña, petitioner pro se in
the above-entitled action, to declare and state:

1. I am the petitioner in the above-entitled
action;
2. I initially filed the above-entitled Motion to
Vacate, Set Aside, or Correct Sentence Pursuant to 28 USC
§2255 on 22 January 2004;
3. I received this court's 7 July 2005 order
denying this 2255 motion on 19 July 2005, neither marked nor
treated as legal mail;
4. I filed a Notice of Appeal, Motion for
Certificate of Appealability, and Certificate of Service

attesting to the required service of that notice and motion on opposing counsel (attached) regarding that order on 9 August 2005 by placing them in an envelope properly addressed to this court with first-class postage affixed, sealing the envelope, and depositing the envelope in the legal mail box at the U. S. Penitentiary at Atwater, CA;

5. I have not received the requested Certificate of Appealability or a statement from the court as to why a COA should not issue or any notice that any portion of the record has been forwarded to the court of appeals;

6. I firmly believe that I have made a substantial showing of the denial of constitutional rights in both my 2255 motion and Motion for a Certificate of Appealability.

Further affiant sayeth not.

I, Isagani Dela Peña, certify under penalty of perjury pursuant to 28 USC §1746 that the foregoing is true and correct.

DATE: 14 March 2006

Respectfully submitted,

Isagani Dela Peña

Isagani Dela Peña, pro se

UNITED STATES DISTRICT COURT

DISTRICT OF GUAM

Isagani P. Dela Peña, Jr.,

v.

United States of America,

Case Number: CR 00-00126
CV 04-00004

**PROOF OF SERVICE
BY MAIL**

I hereby certify that on 9 August 2005, I served a copy
of the attached Notice of Appeal + Motion for Certificate of Appealability,
by placing a copy in a postage paid envelope addressed to the person(s) hereinafter listed, by
depositing said envelope in the United States Mail at The U.S. Penitentiary at Atwater, CA :

(List Name and Address of Each

Defendant or Attorney Served)

Frederick A. Black

U.S. Attorney

Sirena Plaza Ste. 500

108 Hernan Cortes

Agana, GU 96910

I declare under penalty of perjury that the foregoing is true and correct.

Isagani Dela Peña
(Name of Person Completing Service)